Missouri v. McNeely, --- U.S. --- (2013)
Decided April 17, 2013

FACTS: At about 2:08 a.m., a Missouri police officer stopped McNeely's truck for speeding and crossing the centerline. "The officer noticed several signs that McNeely was intoxicated, including McNeely's bloodshot eyes, his slurred speech, and the smell of alcohol on his breath." He was unsteady as he got out of the truck and admitted to having had "a couple of beers." McNeely did "poorly on a battery of field-sobriety tests" and refused the PBT. He was arrested.

On the way to the jail, McNeely indicated he would again refuse any breath testing, so the officer "changed course and took McNeely to a nearby hospital for blood testing." The officer did not have a warrant. Reading from the implied consent form, the officer explained that if he refused to submit to the blood test, his license would be immediately revoked and his refusal "could be used against him in a future prosecution."[1] He continued to refuse and the officer instructed the technician to take the blood anyway. It eventually tested at 0.154, well above Missouri's limit of .0.08.

McNeely was charged with Driving While Intoxicated (DWI).[2] As a result of having 2 prior DWIs, McNeely was charged with a felony. McNeely argued that "taking his blood for chemical testing without first obtaining a search warrant violated his rights under the Fourth Amendment." The trial court agreed, concluding that apart from the fact that his body was metabolizing the alcohol, there was no exigency. Eventually the Missouri Supreme Court affirmed the decision, ruling that pursuant to Schmerber v. California[3], more is required than the "mere dissipation of blood-alcohol evidence to support a warrantless blood draw in alcohol-related case." As this was a "routine DWI case," the Missouri Court ruled that the "nonconsensual warrantless blood draw" was improper.

Missouri requested certiorari and the U.S. Supreme Court granted review.

ISSUE: Is there an exception to the search warrant requirement for nonconsensual blood testing in drunk-driving cases?

HOLDING: No

[1] Mo. Ann. Stat. §§577.020.1; 577.041.
[2] Mo. Ann. Stat. §577.010.
[3] 384 U.S. 757 (1966).

DISCUSSION: The Court began by noting that a "warrantless search of the person is reasonable only if it falls within a recognized exception."[4] The Court applied that principle to the "type of search at issue in this case, which involved a compelled physical intrusion beneath McNeely's skin and into his veins to obtain a sample of his blood for use as evidence in a criminal investigation."

The Court also looked to Schmerber, in which the Court has "reasoned that 'absent an emergency, no less could be required where intrusions into the human body are concerned.'" This was the case even if a lawful arrest had been made.[5] The Court agreed that exceptions can be made when there is a compelling exigent circumstances, including, as relevant to this situation, when there is a need to prevent the imminent destruction of evidence.[6] To evaluate exigency, the Court has always looked to the totality of the circumstances. In Schmerber, the subject had been brought to the hospital as the result of injuries sustained in a wreck, and there was no time for the officers to get a warrant.

In the case at bar, the Court agreed that the natural metabolic processes would cause the alcohol in the bloodstream to decline steadily until totally absorbed and that a "significant delay in testing will negatively affect the probative value of the results." However, the Court explained that it did not follow that it should "depart from careful case-by-case assessment of exigency and adopt the categorical rule" that such searches are automatically permitted.

The Court emphasized that "some circumstances will make obtaining a warrant impractical such that the dissipation of alcohol from the bloodstream will support an exigency justifying a properly conducted warrantless blood test." The Court noted that the suspect has no control over the dissipation process and that it occurs "in a gradual and relatively predictable manner." Moreover, it is inevitable that there will be some delay; just because transport to a medical facility and getting the assistance of the proper medical professional is needed.

Of note, the Court recognized that many states permit "police officers or prosecutors to apply for search warrants remotely through various means, including telephonic or radio communication, electronic communication such as e-mail, and video conferencing."[7] Other jurisdictions have found different way to streamline the process. The Court agreed that "warrants inevitably take time … to complete … and review" even in those

[4] U.S. v. Robinson, 414 U. S. 218 (1973).
[5] See Johnson v. U.S. , 333 U.S. 10 (1948).
[6] Cupp v. Murphy, 412 U.S. 291 (1973); Ker v. California, 374 U.S. 23 (1963).
[7] This Is not currently the case in Missouri, however, nor is there a statutory or provision in the court rules in Kentucky for such warrants, at this time.

states that allow for telephone and electronic warrants. And, of course, nothing guarantees that a judge will be readily available, especially in late night arrests. The Court declined to adopt a *per se* rule, noting that doing so "might well diminish the incentive for jurisdictions 'to pursue progressive approaches to warrant acquisition that preserve the protections afforded by the warrant while meeting the legitimate interests of law enforcement."

The Court left open the possibility that "given the large number of arrests for this offense in differing jurisdictions nationwide, cases will arise when anticipated delays in obtaining a warrant will justify a blood test without judicial authorization, for in every case the law must be concerned that evidence is being destroyed." However, since that was not the question before the Court at this time, the Court declined to address that issue further.

The Court affirmed the decision of the Missouri Supreme Court, declining to create a *per se* rule that warrants are unnecessary for a DWI/DUI blood draw.

NOTE: *In Kentucky, KRS 189A.105 provides for additional penalties against a defendant who refuses the tests requested by a peace officer. If the subject is involved in a situation resulting in the physical injury of a person, a search warrant may be obtained. If there is a fatality, the investigation officer shall seek a search warrant unless the blood, breath or urine has already been obtained by consent. As such, if an officer is unable to get consent from a conscious suspect in a non-injury situation, the proper course of action is to proceed with the prosecution and request the additional penalty upon conviction. If someone is injured as a result, and consent cannot be obtained, the officer should consider a search warrant. This case reinforces the need to make a DUI case upon observations as well as any potential substance testing.*

FULL TEXT OF OPINION: **http://www.supremecourt.gov/opinions/12pdf/11-1425_cb8e.pdf**